

1 **II.**

2 **LEGAL STANDARD**

3 The Prison Litigation Reform Act of 1995 (PLRA) was enacted “to curb frivolous prisoner
4 complaints and appeals.” Silva v. Di Vittorio, 658 F.3d 1090, 1099-1100 (9th Cir. 2011). Pursuant to
5 the PLRA, the in forma pauperis statute was amended to include section 1915(g), a non-merits related
6 screening device which precludes prisoners with three or more “strikes” from proceeding in forma
7 pauperis unless they are under imminent danger of serious physical injury. Andrews, 493 F.3d at
8 1050. The statute provides that “[i]n no event shall a prisoner bring a civil action ... under this section
9 if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought
10 an action or appeal in a court of the United States that was dismissed on the grounds that it is
11 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
12 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

13 **III.**

14 **DISCUSSION**

15 Plaintiff has suffered three or more strikes under section 1915(g). The Court takes judicial
16 notice of the following cases:¹ Hendon v. Witcher, et.al., Case No. 1:05-cv-01246-AWI-DLB (PC(
17 (E.D. Cal. Aug. 6, 2007) (civil rights action dismissed for failure to state a claim upon which relief
18 may be granted); (2) Hendon v. Rogel, et.al., Case No. 2:05-cv-01063-DFL-PAN (JFM) (PC) (E.D.
19 Cal. Aug. 28, 2006) (same); (3) Hendon v. White, et al., Case No. 2:07-cv-01825-GEB-CMK (PC)
20 (E.D. Cal. Feb. 5, 2008) (same).

21 The issue now becomes whether Plaintiff has met the imminent danger exception, which
22 requires Plaintiff to show that he is under (1) imminent danger of (2) serious physical injury and which
23 turns on the conditions he faced at the time he filed suit on May 12, 2017. Andrews, 493 F.3d at
24 1053-1056. Conditions which posed imminent danger to Plaintiff at some earlier time are immaterial,
25 as are any subsequent conditions. Id. at 1053. While the injury is merely procedural rather than a
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28 ¹ Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978).

1 merits-based review of the claims, the allegations of imminent danger must still be plausible. Id. at
2 1055.

3 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the
4 imminent danger exception. Andrews, 493 F.3d at 1053. At the time Plaintiff filed the instant
5 complaint, Plaintiff was housed at California State Prison-Sacramento where he is presently housed.
6 Plaintiff contends from May to October of 2015, he was incarcerated at California State Prison,
7 Corcoran. During that time, he was housed in the Security Housing Unit (SHU), and was denied
8 shower shoes, subjected to constant lighting, subjected to constant noise, forced to remain in a cell
9 with nauseas odors, and had limited personal belongings. Plaintiff requests compensatory and
10 punitive damages as relief. The complaint does not demonstrate that Plaintiff is presently in imminent
11 danger of serious physical injury. Accordingly, Plaintiff is ineligible to proceed in forma pauperis in
12 this action.

13 **IV.**

14 **RECOMMENDATIONS**

15 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 16 1. Plaintiff's application to proceed in forma pauperis be denied; and
- 17 2. Plaintiff be required to pay the \$400.00 filing fee within thirty (30) days of service of
18 the Court's order adopting these Findings and Recommendations.

19 These Findings and Recommendations will be submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
21 after being served with these Findings and Recommendations, Plaintiff may file written objections
22 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and

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Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 15, 2017


UNITED STATES MAGISTRATE JUDGE